

# CONSENSUS-BUILDING AND DISPUTE RESOLUTION: Tools For Effective Planning In Texas Communities

Karen S. Walz, AICP

---

## Introduction

Consensus-building and dispute resolution are important skills for planners, plan commissioners and others involved in the process of shaping local communities. They do not replace the statutory voting processes or legal system for making and reconsidering decisions, but they can contribute to better decisions and decisions that result in long-lasting community benefit because they are actually implemented. This article describes key decision-making processes and then discusses the basic concepts of principled negotiation. It applies these concepts to the creation of a long-term plan, such as a comprehensive plan, and to a decision on a specific project. Since the process of making these planning decisions plays a critical role in the products that result, this article examines issues of process design as well as negotiation within a planning process. In the final section, additional resources for further study are recommended.

### 1. Is Negotiation Good Planning?

To some planners and community residents, the idea of negotiation suggests a decision that 'splits the difference' between two divergent viewpoints. Such negotiation may result in a decision that is not the very best solution from a particular technical perspective and, in that sense, it may be perceived as bad planning.

In reality, community or urban planning is by definition a challenge that requires the consideration of many different perspectives and issues. It forces decision-makers to balance conflicting priorities and usually involves an appraisal of the impacts of uncertain factors on conditions in the future. Because of these challenges, there is seldom a single right answer to a planning dilemma.

Good planning must consider these varied issues and perspectives. It must balance factors and projections about the future. It creates a process for informed public debate and decision-making that furthers a community's long-term vitality. For it to be effective, planning must also enjoy support for implementation. Negotiation — and the other techniques described here — provide tools for community planning that not only do a better job of balancing issues but also increase the likelihood that a decision will lead to action.

### 2. Decision-Making Approaches

Decisions can be made by a wide range of techniques, ranging from a dictator's edict to a Quaker business meeting where discussion continues until all members agree with the 'sense of the meeting' on an issue'. In this section, six decision-making approaches are

summarized. These approaches are among the most commonly used in making decisions about local land use, development and planning. They are described so the role of negotiation or consensus-building can be viewed in the context of other approaches that may be used during or after the negotiation effort.

a. Voting

Public decisions in the United States *are* frequently made through a majority vote. In this system, the person or proposition that receives one vote more than 50% of those voting is the winner. This system usually results in a clear and immediate decision. It also creates specific winners and losers. If the argument has been hard-fought, those losers often have a strong incentive to seek ways to overturn the decision or replace the officials who made it.

Many planning issues are decided by a majority vote of an elected body (such as a City Council) or an appointed body (such as a Planning & Zoning Commission). While the final decision may be made through a vote, it is possible to use other techniques in advance of that vote to improve the quality of the decision and the probability that it will lead to effective action.

b. Legal Action

Legal action is the remedy available through the American justice system. Since government actions are governed by state and federal statutes, as well as local codes and ordinances, parties to decisions have certain legal rights available to them. The ability to challenge or appeal decisions through the legal system is an important safeguard for the public. While the legal system is an important avenue for action, it is not always the most effective route to a wise and lasting decision. This article does not address strategies for legal action or defense, but rather focuses on techniques for resolving planning disputes prior to the time legal action is taken.

c. Arbitration

Arbitration is "an adversarial system of justice designed to present a disputed case to a neutral and impartial third party for decision"<sup>2</sup>. This approach is familiar to many people because of its use in labor disputes, where employers and employees may agree (or be required) to use arbitration in order to settle a contract dispute. In arbitration, both sides ~~present their positions to a third party~~: That third party then makes a decision based on the information presented. In 'binding arbitration', both parties agree in advance that they will be bound by the arbitrator's decision. In 'non-binding arbitration', other appeals are possible.

<sup>1</sup> If an individual does not concur, they are recorded as 'standing aside'. Source: "An Introduction to Quaker Business Practice" by Eden Grace, at [www.wcc-coe.org](http://www.wcc-coe.org).

<sup>2</sup> "Frequently Asked Questions about Mediation and Negotiation", at [www.mediate.com](http://www.mediate.com).

Arbitration is not commonly used in resolving planning disputes. Most legislative structures for making planning and zoning decisions do not mandate it. Decision-makers dealing with these issues usually prefer other approaches to one which gives the decision-making authority to a third party; City Councils in particular may not be able to delegate their decision-making powers in this way. Court-appointed Special Masters are sometimes used to deal with planning or environmental issues in a process where they serve as a neutral third party and are empowered to make decisions that are often binding on the parties to a dispute.

d. Mediation

A mediation process also involves a neutral third party. However, a mediator does not have the ability to decide the issue. She is responsible for working with the affected parties to seek an agreement they will support. Since mediation is generally a voluntary process, it can be structured appropriately for a specific circumstance.

So-called 'shuttle diplomacy' is a good example of mediation. In this case, a mediator meets with each side separately to understand their concerns, interests and positions. The mediator seeks to develop a proposed agreement she thinks will be satisfactory to both sides. Then she shuttles back and forth between them and modifies the agreement until both sides support it.

As with arbitration, mediation is seldom used in planning situations. Often, the different sides in a planning dispute do not have such clearly-defined bargaining teams or equivalent standing to one another. Planning issues often have many different interests involved, not just two. Also, there may be a need to conduct discussions in open public forums. Other forms of negotiation are more appropriate in these settings.

e. Negotiation

Negotiation is defined as an effort "to try to reach an agreement or arrangement by discussion". A variety of techniques meet this definition. Some researchers distinguish two approaches to negotiation: competitive or positional negotiation and integrative or principled negotiation'. Principled negotiation is discussed in greater detail in section 4 below. Competitive negotiation assumes that benefits to one side come at the detriment of the other. There is not the perception that a 'win-win' solution exists. Competitive negotiators may use such stereotypical 'hard bargaining' tactics as staking out a strong initial position and refusing to move from it; challenging the individuals on the other side as well as the facts or issues on the table; and viewing the negotiation as an effort to achieve the position they have established for the specific negotiation rather than an attempt to come to an agreement that will be beneficial to many parties or over the long term.

<sup>3</sup> Oxford American Dictionary.

"Frequently Asked Questions about Mediation and Negotiation", at [www.mediate.com](http://www.mediate.com)

A typical competitive negotiation in a planning setting is a subdivision case where the applicant's representative insists that the property's zoning entitles the owners to a certain number of residential lots and then uses the negotiation process to secure that amount regardless of other community concerns. A competitive negotiation may reach a result that's satisfactory to at least one side in the short term, but it may not serve the broader community interest and may not be stable in the long run.

f. Alternative Dispute Resolution (ADR) Techniques

The term 'alternative dispute resolution' is used to describe a range of techniques that offer alternatives to the more traditional voting or legal decision-making processes. They can be effective in resolving distributional disputes — that is, disputes where the argument focuses on the allocation of resources or assets.' In general, these techniques are based on the assumption that the best agreement results from a process which both sides:

- View as fair and unbiased;
- Experience as efficient;
- Believe has addressed their interests and needs; and
- Expect to be stable over time.

These techniques seek to achieve a consensus about the issues at hand. The concept of consensus does not mean that everyone is completely satisfied with the results. Rather, consensus can be seen as a result "that everyone agrees to live with, even though it may not be the ideal solution for any individual participant'. Consensus-building usually requires a different process than decision-making done by a majority vote or by recourse to the legal system. It should include or involve all the affected parties and should seek an outcome that these parties see as mutually beneficial and, as a result, that the parties do not seek to overturn after the agreement is completed.

Integrative or principled negotiation is an important ADR technique. Some forms of mediation also seek to reach a consensus and can be considered as alternative methods for dispute resolution. The use of neutral third parties, such as facilitators, is another ADR technique that is particularly valuable for disputes where there are:

- Many different parties or stakeholders, particularly if some of them are highly polarized;
- A complex situation and many issues that must be addressed or resolved in a coordinated manner;
- Challenges due to the lack of information or varying perspectives about the validity of the available information;
- ~~Debates over data or technical~~ analysis and parties with varying levels of expertise in evaluating this information; or

Disputes that deal with a group's rights typically involve challenges such as constitutionality; they are resolved through the legal system.

• "Consensus Building for Sustainable Communities", Karen Walz in the Journal of Carolina Planning, Volume 20, No, 1.

- Uncertainty about results that will not become apparent until some time in the future. Since many planning disputes have one or more of these characteristics, alternative dispute resolution techniques can be very valuable in addressing them.

### 3. Concepts of Principled Negotiation

The term 'principled negotiation' was first popularized in the book "Getting to Yes: Negotiating Agreement Without Giving In", which was published in the U.S. in 1981. Its authors, Roger Fisher and William Ury, proposed that successful negotiations were based on a certain set of principles. They argued that such negotiation was more likely to result in a wise decision, which they defined as: "one which meets the legitimate interests of each side to the extent possible, resolves conflicting interests fairly, is durable, and takes community interests into account". The major components of this approach are summarized in the box to the right. The application of these components in a planning context is described below, based on a simplified issue facing the imaginary Town of Lincolnville as it prepares a new comprehensive plan.

- Separate the PEOPLE from the Problem
  - Recognize the negotiator's interests in the substance and the relationship
  - Address issues of perception, emotion and communication
- Focus on INTERESTS, Not Positions
  - For a wise solution, reconcile interests, not positions
  - Identify interests and recognize that each side has multiple interests
- Invent OPTIONS for Mutual Gain
  - Separate inventing from deciding
  - Broaden the options
  - Look for mutual gain

*Concepts of Principled Negotiation from "Getting to Yes; Negotiating Agreement Without Giving In"*

#### a. Separate the People From the Problem

Lincolnville is preparing a new comprehensive plan to guide its growth over the next 20 years. An advisory committee has been formed with representatives of local businesses, neighborhoods, civic groups and development companies. The committee has become polarized because of strongly-held opinions about the appropriate future use of properties in an area between an existing single family neighborhood and the extension of a major arterial street. Neighborhood and civic representatives believe the business and development representatives intend to 'take the money and run' by planning for intensive commercial uses that will generate high profits for others in their industries while degrading the community's character. The business and development representatives are convinced the neighborhood and civic representatives are "NIIVIBY's"<sup>8</sup> who have an irrational fear of any sort of development other than single family housing.

By separating the people from the problem, the planner staffing this committee will recognize the emotional issues to which both sides are responding. He will also recognize that these individuals have on-going relationships with one another that extend beyond this planning project.

7 "Getting To Yes: Negotiating Agreement Without Giving In", page 4.  
8NIMBY: Not In My Backyard.

He will structure the committee's discussion so it focuses on the problem at hand — an appropriate development pattern — and causes both sides to re-examine their assumptions about the other side's positions and the interests behind them.

b. Focus on Interests, Not Positions

The Lincolnville land use decision initially seems to be an 'all-or-nothing' proposition: plan the area for single family uses or plan it for intensive commercial activities. In reality, there are many variations between these two use patterns. These variations include intermediate development intensities, planning for a mix of uses in the area or inclusion of landscape and open space buffer areas between the neighborhood and future uses. Other details of the development pattern may further address specific concerns. For example, the height of buildings could be stepped down so the highest buildings are along the arterial and lower structures are adjacent to the neighborhood. The circulation pattern within the new area could be designed so traffic generated by new uses does not have a negative impact on the existing neighborhood. Other design requirements could include screening, lighting and noise limitations.

The planner using these principled negotiation techniques will focus on the interests of each side in this discussion rather than on their stated positions. The neighborhood may, for example, be most concerned about traffic impacts and the loss of privacy for residents if tall buildings are located directly behind the back yards of existing homes. The design approaches suggested above may address these interests even though the residents' initial position — develop only single family homes in this area — is not maintained.

c. Invent Options for Mutual Gain

The concept of mutual gain is based on the fact that most negotiators have different interests or value certain factors differently. In Lincolnville, circulation design, open space buffers and building height limitations may resolve the concerns of the residents. If the business and development interests are most concerned about the ability to plan sufficient land to meet future employment needs, a pattern with varying intensities may address this interest as well. The open space buffer may provide an amenity for future employees in the area and a circulation pattern with limited access points from the arterial may support the creation of an identifiable employment center where employees and visitors park their cars in a centralized location when they arrive and then walk between multiple destinations. The centralized parking and access may help the area attract new employment but may have the same impact on the existing neighborhood as other designs with multiple arterial access points.

In this example, a new option for this area takes advantage of the different values and objectives of the two sides and provides for mutual gain. This option is a land use plan for non-residential uses that includes vehicular circulation from a centralized access point on the arterial; an open space area adjacent to the existing homes and a provision for reducing building heights in areas closest to the neighborhood. This option addresses all the interests of both sides, yet does not reflect the initial position of either.

d. Insist on Using Objective Criteria

A final aspect of principled negotiation involves the use of objective criteria. When the Lincolnville steering committee is considering its new option, some important details may include the amount or depth of the open space buffer and the intensity of non-residential uses along the arterial. Objective criteria for these decisions could include factors such as the provision of an open space buffer that is the same depth as the typical back yard in the adjacent residential area; the intensity of development along the arterial might be determined by relating the number of employees per acre to the intensity in a comparable employment center in another part of Lincolnville. By using objective criteria to reach agreement on these details, the committee members are more likely to believe the final agreement is fair and adequately addresses their interests. Also, objective criteria help the future developers and decision-makers by providing a clear explanation of how much development or buffer is intended. In this example, the comprehensive plan itself is the statement of the final agreement. Should conditions change, a change in the plan's policies can be based again on the objective criteria used initially.

e. Additional Information on Principled Negotiation

The Lincolnville comprehensive plan illustrates some of the key concepts of principled negotiation in a simplified planning situation. "Getting to Yes" includes a great deal of additional information and insight on this approach to negotiation. It is highly recommended as a basic text for professional planners and elected or appointed officials dealing with planning issues.

#### **4. Involvement, Inclusion and Representation**

The use of principled negotiation offers a method of resolving planning disputes among key parties. To be effective, the planner or official seeking to resolve the dispute must also address issues that relate to the parties who have an interest in the issue. This section addresses the questions related to the people who may participate in the discussion and the role such choices play in reaching a successful conclusion.

a. Who Decides?

The end result of effective planning is a community that achieves its goals. This result is not achieved by the decisions of a single individual or group; rather, it is the result of decisions made by many different entities over a long period of time. Therefore, the question of 'who decides' in resolving a planning dispute may not have a simple answer. To reach a wise decision, planners must consider the immediate decision-makers and those whose longer-term decisions will also affect the outcome. The immediate decision-makers for a planning issue should be clearly identified at the beginning of the discussion or negotiation. Typically, the decision-makers will be the City Council, an appointed board (such as a Planning Commission) or an administrative official (such as the Planning Director). The decision-maker(s) should be responsible for establishing the role the negotiation will play in the ultimate decision. They should address questions such as:



- Will the committee be providing general advice or is it being asked to prepare a specific agreement for the board's consideration?
- If the decision-making body is represented in the negotiation, will that representative be responsible for advocating its result to the entire decision-making group?
- What happens if the negotiators do not reach agreement?

These questions are important because they establish the expectations for the negotiation. If participants have differing assumptions about the role of the negotiation, it's often difficult to reach a successful conclusion.

While the participants in the negotiation will typically report their recommendations or agreements to the immediate decision-makers, it's important to recognize the role of the longer-term decision-makers in the agreement as well. Even if Lincolnville adopts a comprehensive plan that addresses all the interests of its steering committee members, the pattern of development described in that plan will not occur unless a property owner decides to build on that property. Therefore, principled negotiators will consider the interests of such longer-term decision-makers as well as those who will take an immediate action. This does not mean that the public decision-makers must ensure the success of these other actors. Rather, it recognizes that many individuals and organizations contribute to a community's future and that a planning decision that respects the interests of these groups is more likely to enjoy a broad base of support and is more likely to be implemented through the decisions these groups make over time.

b. Who is "At the Table"?

Decisions about the participants in a planning negotiation are extremely important in determining whether an agreement will be reached and, if it **is**, whether it will remain in place over time. A general rule is that the stakeholders in the decision should be involved in the negotiation. Stakeholders — those who have a stake in the issue — can be defined very broadly or very narrowly. In the broadest sense, all current and future residents and property owners in a community have a stake in that community's long-range planning decisions. But it is infeasible to include all these stakeholders in a negotiation.

Decisions about participation usually involve a balance between a large group of participants that may be unwieldy or unable to reach agreement and a small group of participants that excludes key interests and is unable to reach an agreement that is supported by decision-makers. The questions below suggest the factors to be considered in identifying participants for a planning negotiation:

- How significant is this issue for the community as a whole? The greater the significance, the larger the number of participants that should be included. The more narrowly focused the issue, the smaller the number of participants.
- Which groups or individuals will be most directly affected by the decision? They should be included or represented in the negotiation.
- Which groups or individuals can contribute relevant expertise or insight to help address the substantive issues and differing perceptions of the problem? They should be included as participants or involved as experts to assist the participants.
- How quickly must a decision be made? A smaller group will typically be more successful if the negotiation must be resolved in a very short time.

- What resources are available to support the negotiation? Any negotiation will need resources such as staff support, communications, logistical arrangements and document production. A community should not establish a large committee to address an issue unless it can adequately support the work of that committee.

c. Who Can Block the Decision?

The final consideration in terms of participants is one that may seem backwards. The people or groups that can block the decision should be included or represented among the participants. For example, a key permit from the U.S. Army Corps of Engineers may be required in order for a riverside project to proceed. If the Corps is not involved in the negotiation, the group might reach an agreement only to find that the agreement will not stand because it does not meet that agency's permitting requirements.

## 5. An Effective and Appropriate Decision-Making Process

The process for making a planning decision is often as important as the product that results. For this reason, the process for a negotiation can make valuable contributions to the ultimate success of the results. The process-related issues below should be considered in designing a process for resolving a planning dilemma.

a. Meeting Design

Effectively structuring a negotiation meeting sets the stage for a constructive dialogue. Among the factors to consider are those that are important to constructive meetings in general, such as the choice of a convenient location with adequate space for all participants and logistical arrangements for any presentations that may be needed'. Meeting design details that are particularly important for a negotiation among individuals with divergent initial positions include:

- Clarify the roles and responsibilities of the individuals who will be involved. These may include active participants (such as committee members), professional staff or consultants, experts or others who will present information, observers who may be interested citizens or may be advocates for particular positions, representatives of the ultimate decision-making body and members of the media.
- Structure the meeting agenda so it clearly describes the types of activities and the sort of action expected by participants. Segments of the meeting that are designed to provide information or answer questions should be managed differently than those intended to brainstorm opportunities for mutual gains by group members or those that are intended to reach a consensus agreement. Clarifying these activities on the agenda gives all participants a consistent set of expectations about the amount and type of discussion that will occur; it also provides the group leader or facilitator an equitable way to manage time for a fair and efficient discussion.
- Ensure that any decisions reached by the group are recorded and displayed or made available to all participants.
- Similarly, record a list of issues needing further discussion, additional information requested by the group, or tentative decisions based on particular assumptions that will

be researched further. It's important to use this list for follow-up; it is also helpful when a participant seeks to repeatedly block the group's discussion after there has been agreement that the issue being raised is one that will be addressed at a future time when additional information or analysis is available.

<sup>9</sup> "Successful Public Meetings: A Practical Guide" by Elaine Cogan offers many detailed suggestions for design of meetings that get results.

- Establish a process in advance to address minority viewpoints. Since consensus does not mean 100% agreement, there may be participants who disagree strongly with some aspect of the agreement. If they do not have a way to communicate these disagreements within the process, they are likely to seek ways outside the process that may damage the larger group's consensus agreement. An attachment expressing minority views may be included with the group's recommendations to decision-makers so those concerns are not ignored even though the ultimate agreement that was reached by most participants took another direction

b. Relevant and Timely Information

Information is crucial for participants in a negotiation. The manager of a negotiation process must consider which information is relevant in order for the participants to understand the implications of the choices they are considering. Information may include previous plans or other policy documents, research reports or data. If the process involves citizen representatives, the information provided should be understandable to a lay person. Presentations by experts may provide information when a current written source does not exist.

Information must be provided in time for participants to review it and consider it at an appropriate point in the negotiation. Thus, materials should be provided in advance of meetings so participants can prepare for the up-coming discussion. Information must be provided to all participants equally — in the same format and at the same time — so one side does not have an advantage by virtue of better access to information. Finally, the negotiation process works best when information is available at a time when it will help participants reach agreement. It is not necessary to provide all possible background information at the first meeting of a lengthy process; on the other hand, it is extremely counter-productive for participants to receive information after they have made a decision on a particular issue.

c. Ground Rules that are Clear and Consistently-Enforced

Participants in a negotiation may seek to manipulate the process to achieve their own objectives. It's important that the manager of the process prevent this (or at least make it very difficult) if the outcomes are to be respected by all parties and actually enforced.

Ground rules are useful to reduce process manipulation. Ground rules may cover the order of presentations and discussions, the amount of time each person or organization can speak, the ability to respond to the other side's comments, expectations about time commitments for meetings, attendance requirements and so forth. They should also clearly explain the roles of all the people who may be in attendance, whether they are staff, facilitators, recorders, participants, invited speakers or observers.

The ground rules should be clearly presented at the beginning of the process. All participants should have the ability to discuss the ground rules (and, in some situations, to modify them). Once they are agreed to, the process manager should provide the ground rules in writing to all participants. They should be available for reference during meetings. The ground rules must be enforced consistently throughout the process.

#### d. Speaking and Listening

A principled negotiation can occur only if the parties at the table can communicate with one another about their interests and potential areas of agreement. If emotions are high when the negotiation begins, it may be difficult for the two sides to actually listen to one another. Attention to this aspect of the process can result in significantly better chances for agreement.

Participants' approach to speaking and to listening makes a difference to the negotiation's eventual outcome. When speaking, participants should be clear about their underlying objectives and interests. They should refrain from statements challenging the validity of the other side's positions and from attacks on individuals or the organizations they represent. When listening, participants should be respectful even if they do not agree with the statements being made. The statements by the other side's representatives should be considered to identify underlying interests and areas **where** values differ and thus provide opportunity for mutual gains.

When the negotiation involves a committee or other large group, the addition of two specific roles can make it easier for the parties to speak and be heard'. A facilitator is charged with assisting the participants in reaching agreement. The facilitator must be viewed as a neutral party to the negotiation. He is not an advocate for a particular result, but is responsible for the negotiation process itself. As a result, he enforces the ground rules and works to identify areas of potential agreement among the parties.

A recorder plays a second important role. The recorder is responsible for the 'group memory' — in other words, the written record of the discussion that ultimately results in an agreement. The recorder works closely with the facilitator to capture the ideas and agreements suggested during the discussion. Recorders usually use large flip charts or other similar tools so the record is visible to all participants as it is written; participants are asked to review the recorded statements and the recorder should clarify or correct the written statements so they reflect the sense of the entire group of participants. This approach focuses discussion by recording decisions and documenting issues that are still

unresolved. It forestalls later disagreement that arises when a participant believes written reports after a meeting do not reflect the actual discussion or agreement. Like facilitators, recorders are also neutral parties in the negotiation.

e. Understanding Both Sides' BATNA's

A negotiator often begins her preparations by considering the results she hopes to achieve from the process. Fisher and Ury argue that effective negotiation must take a step further and carefully consider the opposite. BATNA is the "Best Alternative To a Negotiated Agreement". A clear understanding of her own BATNA enables the negotiator to more accurately assess her willingness to make trades or concessions as part of reaching agreement because it gives her a basis for knowing when she is better off walking away from the negotiation.

<sup>10</sup> An excellent detailed explanation of the roles of facilitators and recorders is found in "How to Make Meetings Work", by Michael Doyle and David Straus.

Understanding the other side's BATNA is also valuable, since that BATNA indicates how important it is to them to reach agreement. Preparations for discussion or negotiation should include identification of the BATNA\_ of the other side, as well as one's own BATNA. A strong BATNA means a better bargaining position because it means the options outside the agreement are more appealing.

f. Responding to Opponents

The concepts of principled negotiation apply when opponents to an agreement seek to change or derail the direction a negotiation has taken. The person representing the negotiation should use techniques such as:

- Presenting recommendations based on objective criteria rather than as responses to personal preferences;
- Seeking to have opponents provide objections that can be compared to those criteria, or that can be used to identify underlying interests that may be served by the agreement;
  - Recognizing the importance of future relationships among all parties; and

Separating disagreement about positions from personal attacks or challenges. These strategies may lead opponents to a better understanding of the negotiated agreement and potentially to support for it. Even if the opponents do not change their position, this approach strengthens the negotiation's advocates because it gives them an opportunity to shape responses to objections that may be heard by the ultimate decision-makers.

g. Binding All Parties to the Agreement

When an agreement has been reached, it must be recorded in a way that participants on all sides can support and follow it. In the case of a plan or a decision on a specific development proposal, the agreement is formalized through a document that is approved by the decision-making body. In other cases, the agreement may be formalized through a memorandum of understanding or a letter of agreement. Whatever form is used, the document should be drafted to include all the points that were important to the agreement that was reached. All parties should review the draft and confirm (through their signatures on the agreement or in some other way) that they support the agreement.

The agreement must be binding on the parties if it is to actually be effective. If the agreement leads to adoption of a plan or approval of a zoning change, the effects are clearly binding and can be enforced through the city's normal processes of development review and building inspection. If the agreement addresses other issues, such as creation of a special financing entity or public-private partnership, the agreement itself should include terms that bind the parties to implement the agreement. As an example, a city and an Economic Development Corporation might reach an agreement to jointly fund an infrastructure study for a new employment area in the community. Along with a clear statement of the purpose and scope of the study, the agreement should contain an explanation of the funds each will contribute and a timetable for this funding so both parties can be assured that their partner will follow through on the agreement reached through negotiation.

---

11 "Getting to Yes: Negotiating Agreement Without Giving In", page 104.

## **6. Reaching Agreement within a Long-Range Planning Process**

The previous sections of this article apply to many different types of planning disputes or negotiations. When the context of the negotiation is a long-range planning process, such as the creation of a comprehensive plan, there are some particularly good opportunities to use the techniques of principled negotiation to benefit a community's future.

### **a. Process and Product**

The process for creating or updating a comprehensive plan is almost always as important to the community future as the product (or document) that results from the process. The comprehensive planning process should be viewed as an opportunity to bring together diverse stakeholders and reach agreement about the direction the city should follow. While a comprehensive plan steering committee also serves other functions, it can play a valuable role as the forum for negotiation of multiple issues among many stakeholders. The techniques described above are particularly useful for a comprehensive planning process in a community with strong disagreements about growth and community character.

These techniques can be used with subcommittees of a large advisory committee as well. If the committee leaders identify an issue that requires more discussion than the entire group can provide, a subcommittee can be asked to meet and develop recommendations for the whole committee to consider. In this case, the subcommittee sessions should be structured to take advantage of a facilitator, recorder and the negotiation techniques described above.

### **b. The Plan as Negotiation Text**

The comprehensive plan should be the culmination of professional research and public discussion. The resulting document is essentially the result of this input and the dialogue and negotiation that occurs with key groups, including the advisory committee, Planning Commission and City Council. As the plan proceeds through this process, the draft document becomes the negotiating text for all involved stakeholders and decision-makers. The staff and citizen leaders of the process should ensure that the plan:

- Explains who was involved in the discussions and what the planning process was;
- Clearly states the positions or decisions reached through the discussion and negotiation process;
- Includes any qualifications or time limits that were important to the people reaching the agreement;
- Contains any statements that are necessary to demonstrate binding commitments made as part of the agreement; and
- Provides a means to review or reconsider decisions if important assumptions or conditions change.

### **c. Agreeing Now on Discussing Later**

Since long-range planning studies are designed to shape the future, there is always a degree of uncertainty about the impacts a plan will have over time. Also, there are often issues that must be addressed in the plan but for which detailed information is not available. It is impossible to resolve all uncertainties about the future, so such resolution cannot be expected prior to action on a long-range plan. For this reason, a long-range planning process must reach agreement on issues based on the best current research but without complete information. In these instances, the plan can be effective in providing a

statement of direction for future research and deliberation. The plan may recommend a more detailed study of a specific geographic area or a particular technical issue. By agreeing on the process for continuing negotiation and decision, the stakeholders in the long-range planning effort can narrow the scope of future deliberations and establish the objective criteria to be used in refining the policies expressed by the long-range plan.

## **7. Reaching Agreement at a Project Review Level**

Planning disputes often occur in the context of a development proposal for a particular piece of property. These project-level planning negotiations are generally simpler than those that create a long-range plan in the sense that there may be fewer issues, the issues are more focused and the number of affected stakeholders is often smaller. On the other hand, they can be more difficult because there is a more direct perceived connection between the decision and the parties' financial and other outcomes.

### **a. Process and Product**

The process for project-level decision-making is generally subject to more specific standard procedures established through state statutes, local codes and regulations. It is essential that these procedures be followed in addressing a disputed development proposal. The negotiation techniques described above can be used within this context if they supplement, rather than replace, the normal procedures.

One example of the role negotiation techniques can play at a project-specific level is the case of a zoning dispute. If adjacent owners object to a proposed development plan, the Planning Director or the Plan Commission may request a developer to meet with those neighbors prior to a staff recommendation or Commission action on the project. The negotiation and dispute resolution techniques described here can be used to organize and hold that meeting. The use of these techniques can make the meeting more effective and may result in a better agreement than otherwise would occur.

### **b. Realistic Commitments**

All parties to a negotiation about a development project must recognize the limits inherent in a development approval and, as a result, in any negotiated agreement that is formalized through that approval. A decision to rezone land does not guarantee that a specific use will actually be constructed on that site within a certain amount of time; market conditions, availability of financing and other factors may prevent even the most committed developer from completing a project. On the public side, commitments related to issues such as the timing of infrastructure extension may be contingent on the passage of a bond program by voters. Therefore, negotiators must be clear about the intent of agreements and any contingencies that may affect these agreements, so an unanticipated change in the future is not viewed as a betrayal of the trust of those who participated in the negotiation.

## **8. Constraints on the Use of Consensus-Building in Resolving Disputes**

This article highlights key techniques for building consensus and reaching agreement on issues related to community planning. It outlines steps that can make a discussion of complex issues more likely to reach a successful conclusion. But there are some constraints that limit the use of these tools.



a. State Legislation

The Texas Legislature establishes the provisions for action on decisions such as annexation, subdivision and zoning by Texas communities. Cities must ensure that the process they use to resolve disputed issues is consistent with these state requirements. Such requirements may affect the community's ability to time annexation and service extensions, the role of ex parte communications with decision-makers, the notice required for meetings and action, and other procedures within the planning process. Legislative changes may impact these procedures as well. For example, the 2005 Legislature made notable changes that affect a property owner's vested rights, the definition of a development application and the timing of an application's submission, all changes that could affect the ability to reach agreement on planning issues and development patterns. It is essential that planners and elected or appointed decision-makers understand and follow these requirements and that they review or modify their process as needed to respond to legislative changes.

b. Political Realities

In the ideal world, negotiations would occur with stakeholders who are ethical and who will agree to be bound by the results of the negotiation. In reality, some participants may not behave in an ethical manner. Some may seek to use other avenues to achieve their objectives if they believe their chances for success are greater outside the negotiation, or if they simply want to keep all their options open. And some decisions are based on political calculations that do not directly relate to the substantive issues at hand or the interests of those involved in the negotiation.

These realities cannot be neglected. For a planner or decision-maker who seeks a wise agreement on his community's planning and development, the tools described here should improve decisions that are not affected by these circumstances. Where these constraints may exist, the techniques for resolving disputes can still help to improve the ultimate result. For example, a process that focuses on addressing participants' interests and uses objective criteria for making decisions is less susceptible to manipulation by a participant who might otherwise use threats to get her way. If this process for resolving planning issues is understood and supported by the ultimate decision-makers, a participant who seeks to gain advantage outside the process is more likely to be referred back to the negotiation.

- In some cases, the political reality is simply that the decision will be made on the basis of other factors. Planners and participants in a negotiation process may build relationships that benefit them in the future even if their work does not change the ultimate outcome.

## 9. Other Resources

This brief discussion of methods for building consensus and resolving disputes is not intended to be the complete and definitive resource on these topics. There are many excellent resources available for planners, commissioners and elected officials who want to pursue these topics further. They include books (some of which were previously mentioned), organizational websites and training programs. These resources include:

- "Breaking the Impasse: Consensual Approaches to Resolving Public Disputes", by Lawrence Susskind and Jeffrey Cruikshank, Basic Books, Inc., 1987.

- "Consensus Building for Sustainable Communities", by Karen Walz, Journal of Carolina Planning, 1995.
- "Getting to Yes: Negotiating Agreement Without Giving In", by Roger Fisher and William Ury, Penguin Books, 1981.
- "How to Make Meetings Work", by Michael Doyle and David Straus, Jove Books, 1982.
- "Successful Public Meetings: A Practical Guide", by Elaine Cogan, Planners Press, 2000.
- Association for Conflict Resolution ([www.acrnet.org](http://www.acrnet.org)). The association is "a professional organization dedicated to enhancing the practice and public understanding of dispute resolution."
- The Institute for Participatory Management and Planning ([www.ipmp-bleiker.com](http://www.ipmp-bleiker.com)). This institute offers training courses for "the art of consent building — the art and science of getting your mission accomplished ... especially when that mission is difficult and controversial."
- The Program on Negotiation at Harvard Law School ([www.pon.harvard.edu](http://www.pon.harvard.edu)). This program is "a university consortium dedicated to developing the theory and practice of negotiation and dispute resolution."

## 10. Why Bother?

Making decisions by an up-or-down majority vote of a small elected group may seem to be a much simpler method for taking action than a negotiation among many people with divergent views. For many planning decisions, that majority vote will come at the end of a negotiation process anyway. The benefits of building consensus through a planning process really accrue to two groups. They help those elected officials who must vote on a final action because they resolve many important issues and increase the probability that there will be broad community support for the final decision. They benefit the future residents, property owners and civic leaders of the community because they result in wise decisions that will be supported, sustained and implemented over time. In the end, the effort to build consensus or resolve disputes should give everyone more assurance about the future direction of the community and about the community's commitment to address the interests of all stakeholders. These benefits mean more certainty and greater support for a community that will be successful over the long term.